

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1, 2, and 4-21 are presently active in this case. The present Amendment amends Claims 1, 4, 5, 9, and 11-14; cancels Claim 3; and adds Claims 15-21.

In the outstanding Office Action, Claims 1, 2, 4, 5, 10, and 11 were rejected under 35 U.S.C. § 103(a) as unpatentable over Ching et al. (U.S. Patent No. 5,808,563) in view of Kelly et al. (U.S. Patent No. 4,910,513). Claims 1-14 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-15 of co-pending Application No. 10/715,392.

Applicant thanks Examiner Lee for the courtesy of a telephonic interview granted on November 12, 2004, and for providing a corrected PTO-892 form.

In response to the provisional rejection of Claims 1-14 under the judicially created doctrine of double patenting, Applicant herewith files a terminal disclaimer in compliance with 37 C.F.R. § 1.321 thereby removing any issue of double patenting of Claims 1-14. For the record, Applicant notes that the “filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.”¹

In an Office Action dated October 19, 2004, and pertaining to co-pending Application No. 10/261,484 (the parent Application), Claims 1, 2, and 4-9 of the parent application were allowed in response to an Amendment filed on June 28, 2002. Thus, in light of the allowability of amended Claim 1 in the parent application, and in the spirit of moving prosecution forward for this application, Claims 1 and 11 of the present application are

¹ Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 874, 20 USPQ2d 1392, 1394-5 (Fed. Cir. 1991).

amended to include a similar feature as the one added to allowed Claim 1 via the June 28, 2002, Amendment filed in the parent applicaiton.

Therefore, in response to the rejection of Claims 1, 2, 4, 5, 10, and 11, independent Claims 1 and 11 are amended to incorporate the features originally recited in Claim 3 (which was not rejected over the prior art). Accordingly, Claim 3 has been canceled. More specifically, Claims 1 and 11 now recite a distance between the first characteristic sign and the second characteristic sign that is proportional to the longitudinal margin of error. This feature is not taught by the Ching et al. and Kelly et al. patents. Applicant respectfully submits that independent Claims 1 and 11 and dependent Claims 2, 4-10, and 12-16 are allowable.

In order to vary the scope of protection recited in the claims, new Claims 15-21 are added. Claims 15 and 16 depend from Claim 14 but are otherwise similar to Claims 7 and 9, respectively. Claims 17-21 recite features originally recited in Claims 1-10. Thus, new Claims 15-21 find non-limiting support in the disclosure as originally filed. Therefore, the new claims are not believed to raise a question of new matter.²

Independent Claim 17 recites a similar feature as discussed above, previously recited in Claim 3. Therefore, Claims 17-21 are also believed to be allowable over the prior art.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1, 2, and 4-21 is earnestly solicited.

² See MPEP 2163.06 stating that "information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter."

Application No. 10/715,393
Reply to Office Action of November 4, 2004

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Philippe J.C. Signore, Ph.D.
Attorney of Record
Registration No. 43,922

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

PJS/CDA/kke:hri

I:\ATTY\CDA\240-249\245504\245504US.AM1.DOC